

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-156-RJC-DSC**

MICHAEL POND,)
)
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Plaintiff,)
)
)
v.)
)
)
PRIMARY CAPITAL ADVISORS LC,)
)
)
Defendant.)
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)

ORDER

THIS MATTER comes before the Court sua sponte. On January 23, 2012, Plaintiff Michael Pond (“Pond”) and opt-in plaintiffs Steven Todd Lawrence (“Lawrence”), William Smith (“Smith”), and Nicholas Mangus (“Mangus”) filed a Notice of Acceptance of Offer of Judgment and Motion for Partial Judgment (“Notice of Acceptance”). (Doc. No. 55). In their Notice of Acceptance, Pond, Lawrence, Smith and Mangus state that on December 23, 2011, Defendant Primary Capital Advisors LC (“Defendant”) served them with an Offer of Judgment in accordance with Rule 68. (Id. at 1). Pursuant to this Offer of Judgment, Defendant agreed to allow judgment against it and in favor of Pond, Lawrence, Smith and Mangus. (Id.). In the Offer of Judgment, however, Defendant states that “Acceptance by less than all Plaintiffs shall be deemed a rejection of this offer.” (Doc. No. 55-1 at 1).

On December 30, 2011, Eric Pierce filed a Notice of Filing Consent to Join Litigation. (Doc. No. 54). That same day, Pond and the Prospective Plaintiffs accepted Defendant’s Offer of Judgment. (Doc. No. 55-2). Pursuant to Rule 68, Pond, Lawrence, Smith and Mangus filed the Notice of Acceptance on January 23, 2012, (Doc. No. 55), and moved this Court for a judgment only as to these plaintiffs. (Id.). In their Notice of Acceptance, Pond and the Prospective Plaintiffs state that Eric Pierce was not included in Defendant’s Offer of Judgment,

and they “ask that Mr. Pierce’s claims be excluded from any judgment entered as he will continue to pursue his claims and the pending motion for conditional certification.” (Doc. No. 55 at 2).

The parties are hereby **ORDERED** to provide the Court with briefing on whether Pond, Lawrence, Smith and Mangus’s acceptance of the Offer of Judgment is valid.

IT IS, THEREFORE, ORDERED that Plaintiff and Defendant shall each provide such briefing no later than **February 9, 2012**. No responses will be permitted except by leave of Court.

Signed: February 2, 2012



Robert J. Conrad, Jr.

Chief United States District Judge

